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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,570	04/20/2004	Hung-ying Tyan	073338.0200 (04-51121 FLA	5277
5073 BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980	7590 02/26/2007		EXAMINER WANG, QUAN ZHEN	
			ART UNIT 2613	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/26/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/26/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/828,570

Applicant(s)

TYAN ET AL.

Examiner

Quan-Zhen Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 17-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 17 cites the limitation of "the logic encoded in media". However, the specification does not specifically describe or define what is the "media". Therefore, the specification does not enable one ordinary skilled in the art to make and use the claimed invention.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The preamble of claims 17-24 recites "logic for managing network traffic, the logic encoded in media and operable when executed". It appears the logic as recited are executable instructions, therefore, they are software.

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Software or program per se without recitation of embedding in a computer readable media is non-statutory subject matter.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-33 are rejected under 35 U.S.C. 102(a) as being anticipated by Chang et al. (U.S. Patent Application Publication US 2003/0117678 A1).

Regarding claims 1, 9, 17, 25, and 33, Chang discloses a system (figs. 1-5) for managing network traffic, comprising: an internet protocol network (fig. 1, network 110) for communicating traffic, the IP network comprising a plurality of nodes coupled by IP links (fig. 1, node 111 and 112); a wavelength division multiplex (WDM) topology coupled to the IP network (fig. 1, network 120), the WDM topology comprising a plurality of lightpaths (fig. 1, the paths connecting node 1-node5) operable to communicate optical traffic; and a controller (figs. 2-3, NC&M) operable to: provision the IP network for communicating traffic; monitor the IP network for a congestion event; upon detecting a congestion event, select a label switched path (LSP) of the IP network for reroute (paragraph 0113); compute a hybrid path route for the selected LSP between a first node and a second node of the plurality of nodes, the hybrid path route comprising at least one of the plurality of lightpaths of the WDM topology (for example, paragraph

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0113); determine whether performance of the hybrid path route for the selected LSP reduces costs (for example, paragraph 0105); and if the hybrid path route reduces costs: activate a new IP link on each of the at least one lightpaths of the plurality of lightpaths of the WDM topology; and reroute the selected LSP according to the hybrid path route (for example, paragraphs 0101-0109).

Regarding claims 2, 10, 18, and 26, Chang further discloses that the controller is further operable to decommission an idle IP link after rerouting the selected LSP (for example, paragraph 0113).

Regarding claims 3, 11, 19, and 27, Chang further discloses that the controller is further operable to receive a transformed topology constructed by an optical transport service provider of the WDM topology, the transformed topology comprising a subset of available lightpaths of the WDM topology; and wherein the hybrid path is computed based on the transformed topology (for example, paragraphs 0104 and 0113).

Regarding claims 4, 12, 20, and 28, Chang further discloses that the controller operable to account for a cost associated with each IP link and each lightpath of the hybrid path route (for example, paragraph 0105).

Regarding claims 5, 13, 21, and 29, Chang further discloses that a controller operable to activate a new IP link on each of the at least one lightpaths of the plurality of lightpaths of the WDM topology comprises a controller operable to: allocate an unused router port on each end of each of the at least one lightpaths; and activate the allocated router ports with respective established lightpaths (for example, paragraphs 0105 and 0113).

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Regarding claims 6, 14, 22, and 30, Chang further discloses that the IP network comprises an IP router (fig. 1, IP router 111).

Regarding claims 7, 15, 23, and 31, Chang further discloses that the WDM topology couples optical cross-connection of the WDM topology (fig. 1, optical network 120).

Regarding claims 8, 16, 24, and 32, Chang further discloses that the hybrid path route comprises at least one IP link (fig. 1).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Liu (U.S. Patent Application Publication US 2003/0179716 A1 A1) discloses a virtual IP network over reconfigurable WDM network. Kano et al. (U.S. Patent Application Publication US 2003/0043745 A1) disclose a path modifying, label switching node and administrative node in label transfer network.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quan-Zhen Wang whose telephone number is (571) 272-3114. The examiner can normally be reached on 9:00 AM - 5:00 PM, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

qzw
2/14/2007


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